

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service Seeks Comment on Certain of the)	
Commission's Rules Relating to High-Cost)	FCC 03J-1
Universal Service Support and the ETC)	
Designation Process)	

COMMENTS OF GVNW CONSULTING, INC.

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TABLE OF CONTENTS

Summary of Comments	3
Introduction and Background	4
GENERAL ISSUES	5
<u>What did Congress intend to happen?</u>	
<u>Competitive Carriers contribute a chorus of confusion</u>	6
STATE OF THE MARKETPLACE AND UNIVERSAL SERVICE FUND	7
<u>Growth of Fund</u>	
<u>Wireless Substitution</u>	
METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS	9
<u>Portable Support</u>	
<u>Alternative Methodologies</u>	10
<u>Auctions</u>	
<u>Mobile Wireless Location Issues</u>	11
SCOPE OF SUPPORT	11
<u>The Commission previously rejected limiting support to primary lines</u>	12
<u>Basic Definitional Issues – What is a primary line?</u>	13
<u>“Who designates” Issues</u>	
<u>Dispute Resolution</u>	14
PROCESS FOR DESIGNATING ETCs	14
<u>Factors the Commission should consider regarding ETC designations</u>	15
<u>Public Interest Tests</u>	
EXHIBIT A -	17
EXHIBIT B - (separate attachment – 29 pages)	18

Summary of Comments

In the event that the objectives of competition and universal service cannot be reconciled, universal service must take precedence over competition.

Many carriers applying for ETC status already provide service to customers within the study area for which they seek ETC designation. The customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in an immediate and significant increase in the size of the fund for little tangible near-term benefit.

CETCs may receive the same USF support, but are not held up to the same requirements or service standards as the incumbent carriers, which also serve as the Carrier of Last Resort (COLR) in rural areas.

The overarching principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a FULL recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is a cost recovery mechanism for rural carriers. Continuation of this basic tenant is imperative if universal service is to remain available in all geographic areas of the country, no matter how rural or isolated.

Indeed, neither 47 U.S.C. 214(e) nor 47 U.S.C. 254 mentions the promotion of competition as a guiding principle for universal service. Instead, 47 U.S.C. 254(b) sets out the principles for the preservation and advancement of universal service.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Federal-State Joint Board on Universal Service has requested comments and replies on the issues referred by the Commission.

The purpose of these comments is to respond to the Commission's Public Notice seeking comments and replies dated February 7, 2003. On November 8, 2002, the Federal Communications Commission (Commission) requested that the Federal-State Joint Board on Universal Service (Joint Board) "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."¹ In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing services, as well as the Commission's rules regarding support for second lines.² The Commission also asked the Joint Board to examine the process for designating ETCs.³

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*).

² *Id.*

³ *Id.*

GENERAL ISSUES

As a preface to discussing the various federal universal service support questions posed by the Joint Board, it is appropriate to examine two foundational issues. One, what was the congressional intent with respect to implementing the universal service provisions of the Telecommunications Act of 1996? Two, has there been any confusion with respect to prior Court decisions?

What did Congress intend to happen?

In the event that the objectives of competition and universal service cannot be reconciled, universal service must take precedence over competition. Senator Byron Dorgan, who introduced the amendment to the 1996 Act that requires a public interest finding before designating a second ETC in a rural area, said in part⁴:

The protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them. Under this legislation, the State will retain the authority to control the introduction of competition in rural areas and, with the FCC, retain the responsibility to ensure that competition is promoted in a manner that will advance the availability of high quality telecommunications services in rural areas.

⁴ Congressional Record of June 8, 1995, S 7951-2. Senator John F. Kerry of Massachusetts corroborates this view by stating: "The conference report also maintains universal service as a cornerstone of our Nation's communications system." 142 Cong. Rec. S687, S710. In addition, Senator Ernest Hollings of South Carolina (D-SC) stated: "The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement." 142 Cong. Rec. S687, S688.

Competitive Carriers contribute a chorus of confusion

In several recent Commission proceedings, competitive providers have attempted to interpret certain appellate decisions in terms favorable to their advocacy. The most frequently cited decision from the arsenal of rhetoric are various quotes from Alenco Communications, Inc. v. FCC, 201 F.3d 608 (5th Cir. 2000). In this Alenco case, two telecommunications carriers brought suit against the Commission to enjoin changes to the USF. Alenco, 201 F.3d at 614. These changes involved placing caps on the USF that the carriers felt would reduce their rate of return to unacceptable levels and therefore damage the carriers' financial health. Alenco, 201 F.3d at 617-18.

Despite some of the assertions made by certain parties, the language from Alenco must be read in its proper context. For example, in Alenco, the Court explicitly emphasized the need to balance the objectives of universal service and competition:

The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other. The Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition. Alenco, 201 F.3d at 615 (emphasis present in original).

While the Supreme Court has yet to make its final determination with respect to certain of the TA 96 issues, we believe a decision that has stood for five decades is relevant in the context of this proceeding.

In Federal Commission v. RCA Communications, 346 U.S. 86, 97 L. Ed. 1470, 73 S. Ct. 998 at 1004 (1953), Justice Frankfurter stated the applicable standard:

Our difficulty arises from the fact that while the Commission recites that competition may have beneficial effects, it does so in an abstract, sterile way. Its opinion relies in this case not on its independent conclusion, from the impact upon it of the trends and needs of this industry, that competition is desirable, but primarily on its reading of national policy . . .

To say that national policy without more suffices for authorization of a competing carrier wherever competition is reasonably feasible would authorize the Commission to abdicate what would seem to us one of the primary duties imposed on it by Congress.

STATE OF THE MARKETPLACE AND UNIVERSAL SERVICE FUND

Growth of Fund

The question is asked (paragraph 11) as to what extent CETC support will increase over time. In his article, USF Portability – Getting it Right,⁵ Mr. Glenn Brown details several reasons why the size of the USF is expanding so rapidly. He states:

Many carriers applying for ETC status already provide service to customers within the study area for which they seek ETC designation. The customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in an immediate and significant increase in the size of the fund for little tangible near-term benefit.

In its report, Universal Service in Rural America: A Congressional Mandate at Risk, OPASTCO states that, if all wireless carriers in the country were to be granted ETC status, the size of the fund would grow by approximately \$2,000,000,000 annually.⁶ This would clearly represent an unsustainable increase to the existing fund.

Wireless Substitution

At paragraph 14, the Joint Board requests comments on the issue of “to what extent does wireless or other technology represent the addition of complementary service rather than substitution for traditional wireline in rural and high-cost areas?”

⁵ Glenn Brown, “USF Portability – Getting it Right,” Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Newsletter, *The Advocate* (September 2002).

⁶ “Universal Service in Rural America: A Congressional Mandate at Risk,” January, 2003, pp. viii.

An observation with respect to this question is found in the testimony given during the April 2, 2003 hearing before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Technology. In his prepared remarks, Dr. Bill Gillis⁷ addressed the flawed assumption in recent ETC decisions that wireline and wireless services are substitutes.

I would suggest reframing the issue in a different context. First, I would observe mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such. With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connection, we are discussing complementary services, both desired by consumers for different reasons.

Further evidence with respect to the complementary nature of wireless service may be found in a recent statement made by Western Wireless in the Commission proceeding that addressed spectrum-based services.⁸

The Commission should be careful to avoid falling into the trap of thinking that the only wireless/wireline competition that matters is when wireless service completely displaces wireline service, i.e., either when customers drop their wireline service and use wireless as their only phones, or when customers who never had phone service sign up for wireless instead of wireline. Wireless/wireline competition is fueled by consumers' use of wireless not only as a *substitute* for wireline . . . but also as a *complement* to wireline. (*emphasis in original*)

It is apparent that many, if not most, wireless subscribers acquire wireless service as an additional service and not a replacement for wireline services located at their home or business, primarily for the added convenience of mobility. It is not unusual to have wireless service to be unavailable at the billing address of the subscriber. Current pricing

⁷ Director of the Center to Bridge the Digital Divide, Washington State University, former WUTC Commissioner, former Chair of the Rural Task Force.

⁸ Comments of Western Wireless Corporation, WT Docket No. 02-381, February 3, 2003, page 23.

policies of wireless providers whereby the lines of local and long distance have been blurred accentuate the desire of subscribers to utilize the mobility afforded by wireless service.

METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

Recognizing the increasing support received by competitive carriers, the Joint Board poses a series of questions concerning competitive entry and portability of support.

Portable Support

At paragraph 16, questions are asked concerning whether supporting multiple ETCs results in inefficient competition and whether current rules promote competitive neutrality. Wireless carriers seek USF support for a variety of reasons, with one of the more obvious being that it is allowed under current rules⁹

In attempting to answer the question as to whether the current rules are competitively neutral, it can be instructive to view what an unbiased third party observer has to offer on the topic. In this vein, we again cite from the March 2003 Bear Stearns USF Primer¹⁰:

Double (Higher) Standards. CETCs may receive the same USF support, but are not held up to the same requirements or service standards as the incumbent carriers, which also serve as the Carrier of Last Resort (COLR) in rural areas. For example, wireless carriers are not required to support E911 services, provide access to a variety of long distance carriers, or publish directories. In addition, dropped calls, spotty coverage, and call delays are still tolerated from wireless carriers.

⁹ “... not doing so would be like leaving a \$100 bill on the ground.” Bear Stearns Equity Research, Wireline Services: The USF Primer, March 2003, page 17.

¹⁰ Ibid, page 18.

Alternative Methodologies

At paragraph 18, the question is asked as to whether the Commission should calculate support for a competitive ETC based on its own costs. As a prerequisite to making such a determination, the Joint Board and Commission must consider the difficult issues it will face in developing and measuring comparable costs of wireless and wireline service providers. An additional issue will be the jurisdictional separations of costs required of incumbent rural telephone companies. Wireless providers do not presently determine their costs in a jurisdictional manner and are not inclined to expand their existing reporting requirements. Regardless of how costs are determined, the resulting rules must result in sufficient, sustainable support for ETCs that ensures the continued availability of quality communications services to all citizens living in the most remote areas of the country.

Auctions

At paragraph 20, the issues surrounding awarding federal universal service high-cost support based on some form of bidding or auction is addressed. We offer several comments in this regard.

First and foremost, any consideration of auctions should be bifurcated between non-rural and rural. The issues surrounding rural service areas are different from the circumstances experienced by non-rural providers.

One of the most significant challenges in implementing an auction proposal would be to enforce responsibilities for service quality standards on the provider. There are no apparent incentives for an auction winner to invest in the rural infrastructure. It

will be extremely difficult to design an auction process that will result in sustainable and sufficient support necessary to encourage continued investment in infrastructure.

We submit that auctions will not work in rural America as the Commission, and the respective state commission, will find it extremely difficult, if recent past history is any indicator, to enforce its rules to ensure that quality of service obligations are met. The public record is filled with accounts of problems with service quality levels as a result of the implementation of incentive regulation for non-rural carriers.

Mobile Wireless Location Issues

The current rule allowing the billing address to determine the location should be replaced with the use of an actual residential or billing address. If such an address is not available, then the customer should be considered to be located in the zone with the lowest per line support. Such a change could serve to ameliorate the possible abuse of the system where a wireless carrier may establish a billing presence at an address where the largest amount of high-cost support is available, even if this is not where the customer lives or where the service is utilized.

SCOPE OF SUPPORT

Under the scope of support section, the issue of whether to provide federal universal service support to only primary lines is addressed via a long series of questions. We will address the issues concomitant to this topic in a consolidated fashion.

The overarching principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a **FULL** recovery of their costs in providing interstate services. One of the key components of this cost recovery is

the revenue received from federal universal service fund (USF) support. Federal USF is an interstate cost recovery approach (four separate mechanisms) for rural carriers¹¹.

The Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers. This was demonstrated empirically in the Rural Task Force's White Paper 2¹², and this research was corroborated in NECA's recent *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002. We have provided some additional empirical data in Exhibits A and B. Exhibit A reflects the stratified support per loop per month data for the 1246 study areas that are detailed in Exhibit B. Depending on what type of methodology might be used, the loss of support for certain lines could have a deleterative impact on certain rural carriers. We believe that the data presented in Exhibits A and B supports a conclusion that universal service support should continue for all lines in rural study areas.

The Commission previously rejected limiting support to primary lines

Six years ago, the Commission rejected a Joint Board recommendation to limit support to primary lines. This was the right public policy decision then, and remains so today. One of the major concerns raised by the Commission at that time were the administrative issues related to such a policy change. The same concerns remain, and have actually become more problematic in the current environment.

¹¹ See, for example, OPASTCO's Universal Service in Rural America: A Congressional Mandate at Risk, January 2003, page viii: "High-cost universal service support is not a subsidy program for end-user customers. It is a cost recovery program designed to promote infrastructure investment in areas where it would not otherwise be feasible for carriers to provide quality services at rates that are affordable and reasonably comparable to urban areas".

¹² "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

There are a myriad of issues surrounding a proposed transition to providing support to only primary lines. The questions include, but are not necessarily limited to the following:

Basic Definitional Issues – What is a primary line?

It would be necessary to establish clear-cut, easy to understand rules with respect to what constitutes a primary line eligible for federal universal service support.

Questions in this regard include:

- Is the primary line:
 - The first line to an address?
 - The line that has the most usage at an address?
 - Is the definition of primary line limited to residential and single-line business?

“Who designates” Issues

One obvious question that occurs in light of a proposed transition to the provision of federal universal service support on a primary line basis is which party will make the determination. For instance:

- Can the customer designate which of their lines is primary?
- Can the customer designate more than one line as being primary in certain circumstances?
- Can a customer designate more than one line if a different carrier provides each of the designated lines?
- If multiple families live at one address, will each family be able to designate a primary line?
- If a single family has separate phones for different family members, can each family member have a primary line? If not, who has the authority to determine which is primary and which is not?

- If a person has a phone, but no address, can the phone be considered primary?

Dispute Resolution

- How will information needed to administer this distinction be gathered?
- Will each carrier be required to supply other carriers the specific information about each customer?
- Will each carrier have to obtain information from the customer as to what services he is obtaining from other carriers?
- Will the FCC require that a clearing house be instituted that will gather all of the pertinent information from all customers and carriers, and then share it with each carrier as needed to make the determination?
- Who will monitor/police this process?

PROCESS FOR DESIGNATING ETCs

At paragraph 33, the Joint Board asks if there is a need to clarify the standards for ETC designation under the Act. To review, the standard established is as follows¹³:

Upon request and consistent with the public interest, convenience, and necessity, the State commission **may**, in the case of an area served by a rural telephone company, and **shall**, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

It would appear that in some cases states have confused the “**shall**” applicable to non-rural areas with the “**may**” designation that is intended to be applied to an analysis of a request for multiple ETCs in a rural study area.

¹³ 47 U.S.C. § 214(e)(2) (emphasis added).

A more disciplined approach to the designation of ETCs by state commissions is crucial to the future financial stability of the fund. State commissions must examine all aspects of the public interest in their evaluation and not simply base granting of ETC status on a desire to promote competition.

Factors the Commission should consider regarding ETC designations

Previously, the Commission has articulated a proper interpretation of congressional intent for universal service by supporting the need for something more than a vague assertion of intent on the part of the carrier seeking ETC designation:

We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier [requesting ETC status] must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.¹⁴

Public Interest Tests

The purpose of what the legislation attempts to accomplish is relevant with respect to ETC designation issues. Under federal standards, determination of the public interest must be made with reference to the purposes of specific statutory sections to be implemented¹⁵.

¹⁴ In the Matter of Federal State Joint Board on Universal Service Western Wireless Corporation for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248 (Released Aug. 10, 2000), ¶ 24 (emphasis added).

¹⁵ American Paper Institute v. American Electric Power Service Corporation, 461 U.S. 402, 103 S. Ct. 1921, 76 L. Ed. 2d. 22 (1983). In American Paper, the Supreme Court found that FERC was required to make its "public interest" determination with respect to the specific objectives of Section 210 of the Public Utility Regulatory Policy act ("PURPA"). The Court did not refer to the general purposes of PURPA but instead stated in part: "The Commission has a statutory mandate to set a rate that is 'in the public interest' and as this Court stated in NAAC v. FPC, 425 US at 669, 96 S. Ct., at 1811, 'the words 'public interest' in a regulatory statute... take meaning from the purposes of the regulatory legislation.'" American Paper, 103 S. Ct. at 1930.

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Comments in CC Docket No. 96-45 (FCC 03J-1)
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Respectfully submitted,

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EXHIBIT A – SUMMARY STRATIFICATION OF UNIVERSAL SERVICE
SUPPORT PER LINE COMPUTATIONS BASED ON USAC 2ND QUARTER 2003
PROJECTIONS (HC01 AND HC 14)

NUMBER OF ILEC STUDY AREAS WITH SUPPORT PER LOOP EXCEEDING	
\$500 PER LOOP PER MONTH	3
\$200 PER LOOP PER MONTH	11
\$100 PER LOOP PER MONTH	51
\$75 PER LOOP PER MONTH	95
\$50 PER LOOP PER MONTH	206
\$25 PER LOOP PER MONTH	515
\$20 PER LOOP PER MONTH	631
\$15 PER LOOP PER MONTH	817
\$10 PER LOOP PER MONTH	1026
\$5 PER LOOP PER MONTH	1188
TOTAL COMPANIES IN SAMPLE	1246

Note: Largest impact is an amount of \$1,017.23 per loop per month.

EXHIBIT B

EXHIBIT B is contained in a separate attachment (file name SUPPORT PER LOOP.XLS).

This attachment provides the detail (29 pages) for each of the 1246 ILEC study areas reflected in the stratification in Exhibit A.